



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEPR-P (715)

6 May 2004

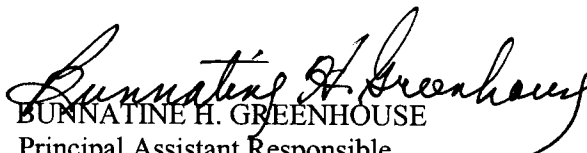
**MEMORANDUM FOR COMMANDERS/DIRECTORS, ALL USACE COMMANDS
(DIRECTORS/CHIEFS OF CONTRACTING)**

SUBJECT: PARC Instruction Letter (PIL) 2004-04, To Establish and Implement a Notification Process for Identification of Countries Restricting Sales to the US Because of US Counterterrorism Efforts or Military Operations

1. Section 821 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), requires the Secretary of Defense, in coordination with the Secretary of State, to identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations. The list is to be reviewed and updated as appropriate.
2. Section 821 applies to all contracts "...in existence on the date of the enactment of this Act [24 Nov 03]...or entered into after such date." I know the enclosed letter from Defense Procurement and Acquisition Policy says that Section 821 "applies to contracts in existence on November 24, 2003"; however, that's the "start date" for applicability of the requirement.
- 3. The enclosed memo from Ms. Deidre A. Lee, Director, Defense Procurement and Acquisition Policy, requests the establishment and implementation of a notification process for identification of countries restricting sales to the US because of US counterterrorism efforts or military operations. The OPARC will consolidate the Corps' replies to forward to Ms. Lee. Your first report to the OPARC, ATTN: CEPR-O, is due NLT 13 May 04.
4. After you have sent your initial report, you will only have to submit reports if and when a contractor tells a contract specialist/administrator/contracting officer that his/her company won't be providing supplies or services to the US because of US counterterrorism or military operations. If that should happen, forward the name and address of the contractor, contract/solicitation number, and item(s) being refused to: HQUSACE (CEPR-O), WASH DC 20314-1000.
5. POC is Dave Petersen, 202-761-0327.

FOR THE COMMANDER

Encl


BUNNATINE H. GREENHOUSE
Principal Assistant Responsible
for Contracting



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

March 31, 2004

MEMORANDUM FOR DIRECTORS, DEFENSE AGENCIES

DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY DIRECTOR FOR LOGISTICS OPERATIONS (DLA)
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, ARMY CONTRACTING AGENCY

SUBJECT: Elimination of Unreliable Sources of Defense Items and Components

Section 821 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), requires the Secretary of Defense, in coordination with the Secretary of State, to identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations. The list is to be reviewed and updated as appropriate.

Section 821 further states that the Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country that has been identified and placed on the list of unreliable sources. The Secretary may waive this limitation if he determines in writing and notifies Congress that the Department's need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives. Section 821 applies to contracts in existence on November 24, 2003. The Department must ensure that such contracts are in compliance with subsection (b) not later than October, 2005. A copy of section 821 is attached for your review.

To date, no countries have been identified and a list therefore does not yet exist. Please ensure your contracting officers are familiar with the requirements of Section 821. I also request you establish a notification process which the contracting officers would use to notify you if a country decides to restrict the delivery or sale of military goods or services to the U.S. This notification should then be forwarded to me for appropriate action.



Please provide me with the status of your implementation and notification process within sixty days of the date of this memorandum. If you or your staff has any questions on this matter, my point of contact is Ms. Susan Hildner, (703) 695-4258, susan.hildner@osd.mil.



Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Part II—Requirements Relating to Specific Items

10 USC 2534
note.

SEC. 821. ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS.

(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense's need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

Applicability.

(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act or entered into after such date.

Deadline.

(2) With respect to contracts in existence on the date of the enactment of this Act, the Secretary of Defense shall take such action as is necessary to ensure that such contracts are in compliance with subsection (b) not later than 24 months after such date.

SEC. 822. INCENTIVE PROGRAM FOR MAJOR DEFENSE ACQUISITION PROGRAMS TO USE MACHINE TOOLS AND OTHER CAPITAL ASSETS PRODUCED WITHIN THE UNITED STATES.

(a) IN GENERAL.—(1) Chapter 144 of title 10, United States Code, is amended by inserting after section 2435 the following new section:

“§ 2436. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States

“(a) ESTABLISHMENT OF INCENTIVE PROGRAM.—The Secretary of Defense shall plan and establish an incentive program in accordance with this section for contractors to purchase capital assets manufactured in the United States in part with funds available to the Department of Defense.

“(b) DEFENSE INDUSTRIAL CAPABILITIES FUND MAY BE USED.—The Secretary of Defense may use the Defense Industrial Capabilities Fund, established under section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program established under this section.

“(c) APPLICABILITY TO MAJOR DEFENSE ACQUISITION PROGRAM CONTRACTS.—The incentive program shall apply to contracts for the procurement of a major defense acquisition program.

“(d) CONSIDERATION.—The Secretary of Defense shall provide consideration in source selection in any request for proposals for